

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In re:

BKY 04-50884

*ROBERT R. BROOKS and
KAREN M. BROOKS,*

Chapter 13 Case

Debtors.

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF
CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Michael J. Farrell, Trustee (the "Trustee"), by and through his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:00 a.m., on October 25, 2004, in Courtroom 2, United States Courthouse, 515 West 1st Street, Duluth, MN 55802.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three (3) days before the time set for the hearing, or filed and served by mail not later than October 14, 2004, which is seven (7) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on August 3, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the debtors' proposed Chapter 13 plan dated August 3, 2004.

6. Debtors propose to pay a total of \$43,200.00 over 48 months to the Trustee ("Plan Funds"). The debtors propose to distribute the Plan Funds as follows:

Home mortgage defaults	\$23,995.94
Other secured claims	3,560.06
Trustee fees	4,320.00
Priority claims	11,324.00
Unsecured creditors	<u>0.00</u>
Total	\$43,200.00

7. The debtors estimate their total nonpriority unsecured claims at \$27,195.20; therefore, the proposed distribution to unsecured creditors amounts to approximately 0% of their claims.

8. On their Schedule I, debtors disclose a monthly payroll deduction of \$333.67 for a Vacation Fund. At the meeting of creditors, debtors explained that this deduction was placed into an account for their sole benefit, and was not a required payroll deduction. As such, this deduction should be stopped which would result in additional disposable income for the benefit of unsecured creditors.

9. The debtors' proposed plan does not meet either of the alternative requirements for confirmation under 11 U.S.C. §1325(b)(1), in that it does not propose full payment of their unsecured nonpriority debts, nor does it devote all of the debtors' projected "disposable income" [as that term is defined in 11 U.S.C. §1325(b)(2)] for the next 36 months toward their plan payments.

10. The debtors' proposed plan has not been filed in good faith.

11. If necessary, the debtors and/or representatives of the Chapter 13 Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests that confirmation of the debtors' proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Michael J. Farrell, Trustee

Dated: October 8, 2004

/e/ Robert R. Kanuit
Robert R. Kanuit, ID # 0252530
Counsel for Chapter 13 Trustee
4815 W. Arrowhead Road, #230
Hermantown, MN 55811
(218) 722-7722

VERIFICATION

I, Michael J. Farrell, Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed: October 8, 2004

/e/ Michael J. Farrell

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MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the debtors in their verified Schedules on file and of record herein.

LEGAL DISCUSSION

Disposable Income. Bankruptcy Code Section 1325(b)(1) requires, alternatively, that in order to survive an objection by the Chapter 13 Trustee or an unsecured creditor, a plan must either pay all claims in full, or provide that all of the debtors' projected disposable income for the next three years will be applied to make payments under the plan. Debtors' plan does not so provide, nor does it pledge all of debtors' actual disposable income to the plan.

CONCLUSION

For the reasons stated herein, confirmation of the debtors' proposed Chapter 13 plan should be denied.

Respectfully submitted:

Dated: October 8, 2004

/e/ Robert R. Kanuit
Robert R. Kanuit, ID # 0252530
Counsel for Chapter 13 Trustee
4815 W. Arrowhead Road, #230
Hermantown, MN 55811
(218) 722-7722

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Bonnie K. Vanderpool, employed by Robert R. Kanuit, Counsel to the Chapter 13 Trustee, declare under penalty of perjury that on October 8, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Plan, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

By First Class U.S. Mail:

Robert and Karen Brooks
129 West Myrtle Street
Duluth, MN 55811

Mr. John F. Hedtke
Hedtke Law Office
1217 East First Street
Duluth, MN 55805

U.S. Department of Justice
Office of the United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 8, 2004

/e/ Bonnie K. Vanderpool

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ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At Duluth, Minnesota on October 25, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the debtors' proposed Chapter 13 plan.

Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

Confirmation of the debtors' proposed Chapter 13 plan dated August 3, 2004, is DENIED.

Honorable Robert J. Kressel
United States Bankruptcy Judge